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**UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA**

MITCHELL MCKINNON; TIMOTHY )  
 VAN NORTWICK; BRENT BRICE; )  
 ZACHERY RIZZO; JOSHUA )  
 REYES; ONIKA JACK; HERBERT )  
 HERNANDEZ; NICHOLAUS JAMES; )  
 LACRETIA DAVIS; SALVADOR )  
 PULIDO, each as an individual and on )  
 behalf of all others similarly situated, )  
 Plaintiffs, )  
 v. )  
 PELOTON INTERACTIVE, INC., a )  
 Delaware corporation; and DOES 1-50, )  
 inclusive, )  
 Defendant. )

**Case No.: 2:22-CV-03368-MWF(Ex)**  
**SECOND AMENDED CLASS AND**  
**COLLECTIVE ACTION**  
**COMPLAINT FOR:**  
**1) VIOLATIONS OF THE FAIR**  
**LABOR STANDARDS ACT (29**  
**U.S.C. §§ 201 *et seq.*)**  
**2) FAILURE TO PROVIDE MEAL**  
**PERIODS (Labor Code §§ 226.7,**  
**512, and 1198, IWC No. 4-2001, IWC**  
**No. 9-2001);**  
**3) FAILURE TO PROVIDE REST**  
**PERIODS (Labor Code §§ 226.7,**  
**1198, IWC No. 4-2001, IWC No. 9-**  
**2001);**

- ) **4) FAILURE TO PAY OVERTIME**
- ) **(Labor Code § 510);**
- ) **5) FAILURE TO MAINTAIN**
- ) **ACCURATE RECORDS (Labor**
- ) **Code §1174(d));**
- ) **6) FAILURE TO PAY ALL WAGES**
- ) **WHEN DUE (Labor Code § 204);**
- ) **7) FAILURE TO PROVIDE**
- ) **ACCURATE ITEMIZED WAGE**
- ) **STATEMENTS (Labor Code § 226**
- ) **(a), 226.3);**
- ) **8) FAILURE TO REIMBURSE WORK**
- ) **EXPENSES (Labor Code § 2802);**
- ) **9) FAILURE TO TIMELY PAY**
- ) **WAGES UPON TERMINATION**
- ) **(Labor Code §§ 201-203).**
- ) **{JURY TRIAL DEMANDED}**

Plaintiffs, MITCHELL MCKINNON, TIMOTHY VAN NORTWICK, BRENT BRICE, ZACHERY RIZZO, JOSHUA REYES, ONIKA JACK, HERBERT HERNANDEZ, AND NICHOLAUS JAMES, LACRETIA DAVIS, SALVADOR PULIDO, each as an individual, on behalf of themselves, and on behalf of all other similarly situated individuals (collectively “Plaintiffs”), hereby brings this Second Amended Class and Collective Action Complaint (“Complaint”) against Defendant PELOTON INTERACTIVE, INC. (“Defendant”), and DOES 1-50, inclusive, (collectively, “Defendants”). Plaintiffs hereby state and allege as follows:

### **INTRODUCTION**

1. Plaintiffs bring this class and collective action against Defendants for, among other things: failure to provide rest and meal breaks; failure to pay all wages owed, including minimum and overtime wages; failure to provide accurate wage statements; failure to reimburse work-related expenses incurred in the discharge of job duties; failure to pay all wages due upon termination; failure to maintain accurate

1 records of hours worked and wages earned; failure to produce employee records upon  
2 request.

3 2. Plaintiffs thus bring this action on behalf of themselves, and other  
4 individuals similarly situated, and seek damages, penalties, and interest to the full extent  
5 permitted, as well as other relief requested herein, pursuant to the California Labor  
6 Code, Industrial Wage Commission (“IWC”) Wage Orders, and Fair Labor Standards  
7 Act, 29 U.S.C. §§ 201, *et seq.* (“FLSA”).

8 **THE PARTIES**

9 **Plaintiff MITCHELL MCKINNON**

10 3. Plaintiff MITCHELL MCKINNON is and was, at all times relevant to this  
11 Complaint, an adult individual who lived in Long Beach, California and worked for  
12 Defendant in the City of Montebello in the County of Los Angeles, California.  
13 Defendant employed Plaintiff as a Treadmill Specialist from approximately October 1,  
14 2019, through May 28, 2021.

15 **Plaintiff TIMOTHY VAN NORTWICK**

16 4. Plaintiff TIMOTHY VAN NORTWICK is and was, at all times relevant  
17 to this Complaint, an adult individual who lived in Hemet, California and worked for  
18 Defendant in the City of Perris in the County of Riverside, California. Defendant  
19 employed Plaintiff as an Assembler, from approximately February 8, 2021, through  
20 around April 9, 2022.

21 **Plaintiff BRENT BRICE**

22 5. Plaintiff BRENT BRICE is and was, at all times relevant to this  
23 Complaint, an adult individual who lived in Los Angeles County, California and worked  
24 for Defendant in the City of Montebello in the County of Los Angeles, California.  
25 Defendant employed Plaintiff as a Warehouse Associate from approximately October  
26 21, 2019, through September 28, 2020.

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1 **Plaintiff ZACHERY RIZZO**

2 6. Plaintiff ZACHERY RIZZO is and was, at all times relevant to this  
3 Complaint, an adult individual who lived in Los Angeles, California and worked for  
4 Defendant in the City of Montebello as well as other surrounding areas in the County  
5 of Los Angeles, California. Defendant employed Plaintiff as a Tread Operations and  
6 Driver from approximately April 5, 2019, through around March 18, 2020.

7 **Plaintiff JOSHUA REYES**

8 7. Plaintiff JOSHUA REYES is and was, at all times relevant to this  
9 Complaint, an adult individual who lived in Riverside, California and worked for  
10 Defendant in the City of Perris in the County of Riverside, California. Defendant  
11 employed Plaintiff as a Warehouse Associate from approximately December 14, 2021,  
12 through February 18, 2022.

13 **Plaintiff ONIKA JACK**

14 8. Plaintiff ONIKA JACK is and was, at all times relevant to this Complaint,  
15 an adult individual who lives in Vallejo, California and worked for Defendant in the  
16 City of Richmond in the County of Contra Costa and in the City of Newark in the  
17 County of Alameda, California. Defendant hired Plaintiff as an Outbound in or about  
18 April 20, 2020, through around October 11, 2021.

19 **Plaintiff HERBERT HERNANDEZ**

20 9. Plaintiff HERBERT HERNANDEZ is and was, at all times relevant to this  
21 Complaint, an adult individual who lived in Los Angeles, California and worked for  
22 Defendant in the City of Los Angeles in the County of Los Angeles, California.  
23 Defendant hired Plaintiff as a Master Technician in or about October 20, 2020, through  
24 on or about May, 2021.

25 **Plaintiff NICHOLAUS JAMES**

26 10. Plaintiff NICHOLAUS JAMES is and was, at all times relevant to this  
27 Complaint, an adult individual who lived in Berkeley, California and worked for  
28 Defendant in the City of Newark in the County of Alameda, California. Defendant

1 employed Plaintiff as a Field Operations Lead from in or about April 20, 2020, to on or  
2 about October 11, 2021.

3 **Plaintiff LACRETIA DAVIS**

4 11. Plaintiff LACRETIA DAVIS is and was, at all times relevant to this  
5 Complaint, an adult individual who lived in Contra Costa County of California and  
6 worked for Defendant in the City of Richmond in the County of Contra Costa,  
7 California. Defendant employed Plaintiff as a Warehouse Buyer Builder from on or  
8 about September 1, 2019, to on or about September, 2020.

9 **Plaintiff SALVADOR PULIDO**

10 12. Plaintiff SALVADOR PULIDO is and was, at all times relevant to this  
11 Complaint, an adult individual who lived in Romoland, California and worked for  
12 Defendant in the City of Perris in the County of Riverside, California. Defendant  
13 employed Plaintiff as an Assembly Technician from on or about March 1, 2021, to on  
14 or about February 8, 2022.

15 **Defendant PELOTON INTERACTIVE, INC.**

16 13. At all times relevant to this Complaint, Defendant was a Delaware  
17 corporation, duly registered to conduct business and employ persons throughout  
18 California, where it employed Plaintiffs. Defendant is an exercise equipment and media  
19 company focusing on internet connected stationary bicycles and treadmills. Defendant  
20 operates several warehouse and distribution facilities throughout the United States,  
21 including the state of California, and employs hundreds of hourly, non-exempt workers  
22 similarly situated to Plaintiffs.

23 14. The Collective members are people who are or who have been employed  
24 by Defendant as hourly, non-exempt employees in the United States at any time within  
25 the three years preceding the filing of this Complaint.

26 15. The Class members are all people who are or who have been employed by  
27 Defendant as hourly, non-exempt employees in California within the four years  
28 preceding the filing of this Complaint.

1           16. Plaintiff is informed, believes, and thereon alleges that Defendant  
2 exercises control over Plaintiff and putative Class and Collective members with respect  
3 to their employment.

4           17. Plaintiff and Class and Collective members were and are employees of  
5 Defendant within the meaning of 29 U.S.C. § 203(e).

6           18. At all material times, Defendant has been an enterprise in commerce or in  
7 the production of goods for commerce within the meaning of section 3(s)(1) of the  
8 FLSA because Defendant has had and continues to have employees engaged in  
9 commerce. 29 U.S.C. § 203(s)(1).

10           19. Plaintiff is informed, believes, and thereon alleges that Defendant has had,  
11 and continues to have, an annual gross business volume of not less than \$500,000,  
12 thereby exceeding the statutory standard. 29 U.S.C. § 203(s)(1)(A)(ii).

13           20. In addition to Plaintiff, Defendant has employed numerous other  
14 employees who, like Plaintiff, are hourly, non-exempt employees engaged in interstate  
15 commerce. Further, Defendant is engaged in interstate commerce since it orders  
16 supplies across state lines, conducts business deals with merchants across state lines,  
17 and processes patient credit cards with banks in other states.

18           21. At all material times, Plaintiff and Collective and Class members were  
19 employees who engaged in commerce or in the production of goods for commerce as  
20 required by 29 U.S.C. § 207.

21           22. At all material times, Defendant has done business under the laws of  
22 California, has places of business in the State of California, including in this judicial  
23 district, and has employed putative Class members in this judicial district. Defendant is  
24 a “person” as defined in California Labor Code § 18. Defendant is also an “employer”  
25 as that term is used in the FLSA, California Labor Code, and the IWC Wage Orders.

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**JURISDICTION AND VENUE**

23. This Court has subject matter jurisdiction over Plaintiffs' Complaint, as Defendant has removed this action to the Central District of California, on diversity grounds pursuant to 28 USC §§ 1332, 1441, 1446.

24. Venue is proper in the Central District of California as this case was removed from the Superior Court of Los Angeles County. In addition, pursuant to 28 U.S.C. § 1391, venue is proper because Defendant is a corporation that (i) is subject to personal jurisdiction in this District, and, therefore, resides in this District and/or (ii) committed the wrongful conduct against members of the Class and Collective in this District.

**GENERAL ALLEGATIONS AND SUMMARY OF CLAIMS**

25. Plaintiffs allege that they and the Class and Collective Members are individuals who currently work or formerly worked for Defendant throughout the United States, including in the State of California, as non-exempt, hourly, full time and part time employees. Plaintiffs and such Class and Collective Members work/worked in non-exempt, hourly-compensated positions at Defendant's warehouse locations including, Treadmill Specialist, Assembler, Warehouse Associate, Tread Operations, Driver, Warehouse Associate, Master Technician, Field Operations Lead, and other similar positions for Defendant, a fitness technology and exercise equipment company. Plaintiffs and Class and Collective Members' primary job duties were including, but not limited to, maintaining inventory, streamlining delivery process, customer service, making deliveries, assembling products and troubleshooting equipment among other responsibilities assigned.

26. The duties of Treadmill Specialist, Assembler, Warehouse Associate, Tread Operations, Driver, Warehouse Associate, Master Technician, and Field Operations Lead are very similar. Any differences in the job activities between the different positions were and are legally insignificant to the issues presented by this action. The same policies, procedures, employee handbooks, manuals, compensation



1 plans, and training modules were uniformly applied to the nonexempt Plaintiffs and  
2 Class and Collective Members, which means individual issues will not predominate,  
3 and in fact, all issues are systematically linked, related and common, both in terms of  
4 facts and law for Plaintiffs and each of the members of the Class and Collective.

5 27. Plaintiffs and the Class and Collective Members are/were at all times  
6 subject to the FLSA and California's laws and regulations protecting the employees'  
7 entitlement to be paid and presumption to be paid all wages earned for labor performed,  
8 including their hourly wages for each and every hour worked, premium pay for missing  
9 or not law compliant rest and meal breaks, overtime wages for each and every overtime  
10 hour worked at the accurate corresponding overtime pay rates.

11 28. Labor Code § 512 provides in relevant part: "An employer shall not  
12 employ an employee for a work period of more than five hours per day without  
13 providing the employee with a meal period of not less than 30 minutes . . . . An employer  
14 shall not employ an employee for a work period of more than 10 hours per day without  
15 providing the employee with a second meal period of not less than 30 minutes . . . ."

16 29. IWC Order No. 4-2001 and No. 9-2001, which applies to Defendant's  
17 industry, likewise requires employers to provide meal periods to employees. Section  
18 11(C) of IWC Order No. 4-2001 and No. 9-2001 provides in relevant part: "Unless the  
19 employee is relieved of all duty during a 30-minute meal period, the meal period shall  
20 be considered an "on duty" meal period and counted as time worked."

21 30. Due to Defendant's unreasonable performance demand and the shortage of  
22 staff, Plaintiffs and Class and Collective Members oftentimes worked shifts that  
23 exceeded twelve hours per workday.

24 31. Defendant fails/failed to provide meal periods and rest periods to Plaintiffs  
25 and Class and Collective Members. The nature of Plaintiffs' and Class and Collective  
26 Members' work, providing high volume of service with time frames mandated by the  
27 Defendant was highly competitive, rigorous, and nonstop. Plaintiffs and Class and  
28 Collective Members are/were frequently prevented from timely taking meal breaks and



1 rest breaks due to constant work demands and time restrains, they were not timely or  
2 fully relieved of all duties to take such breaks. Defendant required Plaintiffs and Class  
3 and Collective Members to assist clients and communicate with other employees during  
4 their meal break and rest breaks. Thus, as a matter of course, Plaintiffs and each member  
5 of the Class and Collective were regularly, uniformly and systematically prohibited by  
6 Defendant from taking timely, compliant, uninterrupted, unpaid 30-minute meal periods  
7 for every five hours worked as required by *Labor Code* § 512 and IWC Order No. 4 and  
8 No. 9, nor were Plaintiffs or members of the Class paid a one hour premium wage at  
9 their regular rate of pay for each missed, short, late or interrupted meal period.

10 32. Section 12(A) of IWC Order No. 4-2001 and No. 9-2001 provide in  
11 relevant part: “Every employer shall authorize and permit all employees to take rest  
12 periods, which insofar as practicable shall be in the middle of each work period. The  
13 authorized rest period time shall be based on the total hours worked daily at the rate of  
14 ten (10) minutes net rest time per four (4) hours or major fraction thereof. Authorized  
15 rest period time shall be counted as hours worked for which there shall be no deduction  
16 from wages.”

17 33. Plaintiffs and Class Members were frequently prevented from timely  
18 taking rest breaks due to their constant work demands and personnel shortages. As such,  
19 Plaintiffs, were not timely or fully relieved of all duties to take such breaks. Defendant  
20 mandated Plaintiffs and Class Members to take care of customer’s inquiries and needs  
21 as they come, leaving them no time for rest breaks or shortening the time of their rest  
22 breaks. Thus, as a matter of course, Plaintiffs and Class Members/Subclass Members  
23 were regularly, uniformly, and systematically prohibited by Defendant from taking,  
24 timely, compliant, uninterrupted paid 10-minute rest periods for every four hours  
25 worked (or major fraction thereof) as required by Labor Code §§ 226.7, 512 and IWC  
26 Order No. 4 and No. 9, nor were Plaintiffs or members of the Class paid a one-hour  
27 premium wage at their regular rate of pay for each missed, short, late or interrupted rest  
28 period.

1           34. *Labor Code* § 226.7(c) provides in relevant part: “If an employer fails to  
2 provide an employee a meal or rest or recovery period in accordance with a state law,  
3 including, but not limited to, an applicable statute or applicable regulation, standard, or  
4 order of the Industrial Welfare Commission, . . . the employer shall pay the employee  
5 one additional hour of pay at the employee’s regular rate of compensation for each  
6 workday that the meal or rest or recovery period is not provided.

7           35. Defendant knew or reasonably should have known that Plaintiffs and Class  
8 Members/Subclass Members were not timely relieved of all duties and were impeded  
9 or prevented from taking timely all meal periods and rest breaks.

10           36. Plaintiffs and Class Members/Subclass Members were not paid “premium  
11 pay penalties” pursuant to *Labor Code* § 226.7(c) for any of the workdays that  
12 Defendant failed to provide them timely, uninterrupted meal and rest breaks.

13           37. *Labor Code* § 1194 provides that employees must be separately paid an  
14 hourly wage for each and every hour worked.

15           38. *Labor Code* §§ 218, 1194(a) and 1194.2(a) provide that an employee who  
16 has not been paid the legal wage may recover the unpaid balance and together with  
17 attorney’s fees and costs of suit, as well as liquidated damages in an amount equal to  
18 the wages unpaid and interest thereon.

19           39. *Labor Code* § 1198 states: “The maximum hours of work and the standard  
20 conditions of labor fixed by the commission shall be the maximum hours of work and  
21 the standard conditions of labor for employees. The employment of any employee for  
22 longer hours than those fixed by the order or under conditions of labor prohibited by  
23 the order is unlawful.”

24           40. *Labor Code* § 510 states in pertinent part, “Any work in excess of eight  
25 hours in one workday or in excess of 40 hours in any one workweek ... shall be  
26 compensated at the rate of no less than one and one-half times the regular rate of pay  
27 for any employee.” In addition, “any work in excess of 12 hours in one day shall be  
28 compensated at a rate of no less than twice the regular rate of pay for an employee.” As

1 a matter of course during all or a substantial portion of the Class Period, Plaintiffs and  
2 members of the Class were regularly, uniformly and systematically required by  
3 Defendant to work in excess of eight hours per day, and/or required to work in excess  
4 of 40 hours per week without being paid the requisite minimum and overtime wages  
5 required by *Labor Code* §§ 510, 1194 and IWC Order No. 4 and 9.

6 41. Defendant interrupted Plaintiffs and Class and Collective Members' meal  
7 breaks by holding work-related conversations and required Plaintiffs and Class and  
8 Collective Members to take their meals while providing delivery or customer service.  
9 As such, Plaintiffs and Class and Collective Members were working while off the clock  
10 during their meal breaks. Defendant neither recorded, nor compensated the hours  
11 worked under these situations.

12 42. Due to Plaintiffs and Class and Collective Members working off the clock  
13 during lunch breaks, in many instances the unrecorded hours worked during their shifts  
14 exceeded eight hours a day or over 40 hours in a week.

15 43. For example, in the pay period ending on December 29, 2019, Plaintiff  
16 McKinnon recorded and was paid for 23.55 hours of overtime; but Plaintiff McKinnon  
17 also worked additional unrecorded overtime off-the-clock, including during his lunch  
18 breaks, for which he was not paid minimum or overtime wages.

19 44. Similarly, in the pay period ending on March 21, 2021, Plaintiff Van  
20 Nortwick recorded and was paid for 5.47 hours of overtime; but Plaintiff Van Nortwick  
21 also worked additional unrecorded overtime off-the-clock, including during his lunch  
22 breaks, for which he was not paid minimum or overtime wages.

23 45. Similarly, in the pay period ending on December 15, 2019, Plaintiff Brice  
24 recorded and was paid for 1.69 hours of overtime; but Plaintiff Brice also worked  
25 additional unrecorded overtime off-the-clock, including during his lunch breaks, for  
26 which he was not paid minimum or overtime wages.

27 46. Similarly, in the pay period ending on January 12, 2020, Plaintiff Rizzo  
28 recorded and was paid for 10.67 hours of overtime; but Plaintiff Rizzo also worked

1 additional unrecorded overtime off-the-clock, including during his lunch breaks, for  
2 which he was not paid minimum or overtime wages.

3 47. Similarly, in the pay period ending on May 20, 2021, Plaintiff Reyes  
4 recorded and was paid for 3.47 hours of overtime; but Plaintiff Reyes also worked  
5 additional unrecorded overtime off-the-clock, including during his lunch breaks, for  
6 which he was not paid minimum or overtime wages.

7 48. Similarly, in the pay period ending on November 1, 2020, Plaintiff Jack  
8 recorded and was paid for 15.63 hours of overtime; but Plaintiff Jack also worked  
9 additional unrecorded overtime off-the-clock, including during his lunch breaks, for  
10 which he was not paid minimum or overtime wages.

11 49. Similarly, in the pay period ending on December 27, 2020, Plaintiff  
12 Hernandez recorded and was paid for 16.01 hours of overtime; but Plaintiff Hernandez  
13 also worked additional unrecorded overtime off-the-clock, including during his lunch  
14 breaks, for which he was not paid minimum or overtime wages.

15 50. Similarly, in the pay period ending on May 16, 2021, Plaintiff James  
16 recorded and was paid for 17.27 hours of overtime; but Plaintiff James also worked  
17 additional unrecorded overtime off-the-clock, including during his lunch breaks, for  
18 which he was not paid minimum or overtime wages.

19 51. Similarly, in the pay period ending on April 19, 2020, Plaintiff Davis  
20 recorded and was paid for 3 hours of overtime; but Plaintiff Davis also worked  
21 additional unrecorded overtime off-the-clock, including during her lunch breaks, for  
22 which she was not paid minimum or overtime wages.

23 52. Because Defendant generally required Plaintiffs and Class and Collective  
24 Members to work more than 8 hours per day and/or over 40 hours per workweek,  
25 Defendant regularly failed to pay Plaintiffs and Class and Collective Members for the  
26 unrecorded overtime they spent working off-the-clock, including during their lunch  
27 breaks.  
28

53. Plaintiffs and Class and Collective Members oftentimes worked in excess of 10 hours per workday to fulfill Defendant's demands. Defendant scheduled Plaintiffs and Class and Collective Members to work 10 hours per workday, but the workload assigned would oftentimes take 12-15 hours for them to complete. However, Defendant does/did not at all times compensate Plaintiffs and Class and Collective Members for all hours worked. When certain Plaintiffs brought up the issue of unpaid wages to the management's attention, the management told them that they were not paid because they were not able to finish their tasks on time.

54. Defendant willfully refused to pay Plaintiffs and members of the Class and Collective the required compensation for all hours worked, including minimum and overtime wages, and failed to keep time records as required by law.

55. *Labor Code* § 226(a) requires employers to provide employees itemized wage statements that accurately report, among other things, the total hours worked, and total wages earned in each pay period.

56. Pursuant to Section 11(C) of IWC Order No. 4 and No. 9, Defendant should have correctly counted all purported "meal periods" for which Defendant failed to relieve Plaintiffs and Class Members/Subclass Members of all duty as "on duty" meal periods, and Defendant should have counted those purported "meal periods" as time worked. Defendant should have reported that additional time worked on the itemized wage statements that Defendant provided to Plaintiffs and Class Members/Subclass Members, but Defendant failed to do so, in violation of *Labor Code* § 226(a).

57. Defendant has failed to comply with *Labor Code* § 226(a). As a matter of common policy and practice, Defendant did not include Plaintiffs and Class Members' proper and correct number of hours worked at each correct hourly rate of pay. The wage statements that were distributed by Defendant to Plaintiffs and Class/Subclass Members did not contain all wages earned. Defendant's policies and practices and the omissions on the wage statements were intention and knowing, causing Plaintiffs members of the

1 Class to suffer “injury” by, among other things, impeding them from knowing the  
2 amount of wages to which they are and were entitled.

3 58. Defendant’s failure to accurately record and maintain records of all hours  
4 worked and wages earned further constitutes a violation of *Labor Code* §1174(d), which  
5 requires employers to maintain accurate payroll records of hours worked and wages  
6 earned for a period of three years.

7 59. *Labor Code* § 201(a) provides in relevant part: “If an employer discharges  
8 an employee, the wages earned and unpaid at the time of discharge are due and payable  
9 immediately.”

10 60. *Labor Code* § 202(a) provides in relevant part: “If an employee not having  
11 a written contract for a definite period quits his or her employment, his or her wages  
12 shall become due and payable not later than 72 hours thereafter, unless the employee  
13 has given 72 hours previous notice of his or her intention to quit, in which case the  
14 employee is entitled to his or her wages at the time of quitting.”

15 61. *Labor Code* § 203(a) provides in relevant part: “If an employer willfully  
16 fails to pay, without abatement or reduction, in accordance with §§ 201 . . . 202 . . . any  
17 wages of an employee who is discharged or who quits, the wages of the employee shall  
18 continue as a penalty from the due date thereof at the same rate until paid or until an  
19 action therefor is commenced; but the wages shall not continue for more than 30 days.”  
20 Defendant has failed to pay such individuals “waiting time” penalties pursuant to *Labor*  
21 *Code* § 203(a).

22 62. *Labor Code* § 2802(a) requires employers to reimburse employees for all  
23 expenses they incur in direct consequence of the discharge of their duties or obedience  
24 to their employers’ instructions.

25 63. Defendant required Plaintiffs and Class/Subclass Members to use their  
26 personal cell phones, personal cell phone data plans, personal Internet access, home  
27 Internet access to perform their job duties each workday throughout their employment.  
28 Defendant required them to attend pre-shift meetings, to contact supervisors, to



1 communicate with other employees, to text supervisors and to contact clients and  
2 prospective clients. Plaintiffs and Class/Subclass, it is also essential for them to use the  
3 GPS function on their own personal cell phones using their personal data plans to  
4 perform duties assigned by Defendant.

5 64. Defendant required Plaintiffs and Class/Subclass Members to download  
6 the apps “Deputy,” “Okta,” “Sales Service Lightning,” “Sales Force,” “Duo Mobile,”  
7 “SAT,” “Confirma Pay,” “Google Sheets,” “Safoya,” “Slack” for carrying out their day-  
8 to-day work duties and for authentication purposes to work website, portals, and work  
9 devices.

10 65. As company vans are/were not available at all times, Defendant at times  
11 required Plaintiffs and Class/Subclass Members to use their personal vehicles to travel  
12 between customers’ homes, installation work sites, and/or work facilities to handle  
13 installations and provide customer service.

14 66. Defendant required Plaintiffs and Class/Subclass Members to wear black  
15 shirts, black pants, and black work boots with no markings to comply with the company  
16 dress code. Defendant informed Plaintiffs and Class/Subclass Members that they would  
17 provide the work outfits but only provided one shirt and partial reimbursements for the  
18 black work boots. Defendant also promised Plaintiffs and Class/Subclass Members that  
19 they will receive reimbursements for the tools and gears that they purchased for work  
20 (i.e. charger for the company van), but the said reimbursements were never received.

21 67. Despite Defendant’s requirements that Plaintiffs and Class  
22 Members/Subclass Members incur expenses for using their personal cell phones,  
23 personal cell phone data plans, personal internet access, home internet access, personal  
24 vehicles and for purchasing work-related items, Defendant did not reimburse them for  
25 those expenses incurred in the discharge of their work duties. Defendant’s failure to  
26 reimburse Plaintiffs and Class Members constitutes a violation of *Labor Code* §2802(a).

27 68. Defendant’s company-wide policies and practices violate the FLSA and  
28 California law as pled herein. Plaintiffs seek declaratory relief, reporting time pay,



1 regular and overtime compensation, premium pay for rest and meal break violations,  
2 reimbursement of business expenses, liquidated damages and other damages and  
3 penalties as permitted by the FLSA and California Law, interest and attorneys' fees and  
4 costs.

5 **COLLECTIVE ALLEGATIONS UNDER THE FLSA**

6 69. Plaintiffs re-allege and incorporate the foregoing paragraphs as though  
7 fully set forth herein.

8 70. Plaintiffs bring this Complaint as a collective action pursuant to 29 U.S.C.  
9 § 216(b) on behalf of the following Collective of individuals:

10 **All current and former hourly, non-exempt employees employed by**  
11 **Defendant at one of Defendant's warehouse locations in the United**  
12 **States including Treadmill Specialists, Assemblers, Warehouse**  
13 **Associates, Tread Operations, Drivers, Warehouse Associates, Master**  
14 **Technicians, Field Operations Leads, and other similar positions, at**  
**any time starting three years prior to the filing of this Complaint until**  
**resolution of this action.**

15 71. Defendant has not compensated these employees for all hours worked,  
16 including minimum wage and overtime compensation for all hours worked over 40  
17 hours per week, liquidated damages, and attorneys' fees and costs under the FLSA.

18 72. Plaintiffs' claims for violations of the FLSA may be brought and  
19 maintained as an "opt-in" collective action pursuant to Section 216(b) of the FLSA  
20 because Plaintiffs' FLSA claims are similar to the claims of the Collective members.

21 73. Plaintiffs are informed, believe, and thereon allege that Collective  
22 members have been denied compensation, including overtime compensation for time  
23 worked "off-the-clock," and would therefore likely join this collective action if  
24 provided a notice of their rights to do.

25 74. Plaintiffs and the Collective members are similarly situated. Collective  
26 Members have substantially similar job duties and requirements. Like Plaintiffs,  
27 Defendant subjected Collective members to Defendant's common practices, policies,  
28 or plans that requires them to perform work without compensation in clear violation of

1 the FLSA. Collective Members work, or have worked, for Defendant but were not paid  
2 overtime at the rate of one and one-half times their regular hourly rate when those hours  
3 exceeded forty per workweek. Collective Members also performed compensable work  
4 while “off-the-clock” which, when included with their recorded hours, results in  
5 additional overtime hours worked that were not compensated at the rate of one and one-  
6 half times their regular hourly in violation of the FLSA.

7 75. Although Defendant permitted and/or required Collective members to  
8 work in excess of forty hours per workweek, Defendant has denied them full  
9 compensation for their hours worked over forty as a result of meal breaks that were  
10 interrupted due to work demands and “off-the-clock” work.

11 76. Collective members regularly work or have worked in excess of forty  
12 hours during a workweek.

13 77. Collective members are not exempt from receiving overtime compensation  
14 under the FLSA.

15 78. Defendant’s failure to pay overtime compensation as required by the FLSA  
16 resulted from generally applicable policies and practices and did not depend on the  
17 personal circumstances of FLSA Collective members.

18 79. This action may be properly maintained as a collective action on behalf of  
19 the defined Collective because, throughout the relevant time period:  
20

- 21 a) Defendant maintained common scheduling systems and policies with  
22 respect to Plaintiffs and Collective members, controlled the scheduling  
23 systems and policies implemented throughout their facilities and retained  
24 authority to review and revise or approve the schedules assigned to  
25 Plaintiffs and Collective members;  
26 b) Defendant maintained common timekeeping systems and policies with  
27 respect to Plaintiffs and Collective members; and  
28 c) Defendant maintained common payroll systems and policies with respect

1 to Plaintiffs and Collective members, controlled the payroll systems and  
2 policies applied to Plaintiffs and Collective members, and set the pay  
3 rates assigned to Plaintiffs and Collective members.

4 80. Plaintiffs and Collective members' claims arise from a common nucleus  
5 of operative facts; namely, the continued and willful failure of Defendant to comply  
6 with its obligation to legally compensate its employees. Liability is based on a  
7 systematic course of wrongful conduct by Defendant that caused harm to all Collective  
8 members. Defendant had a plan, policy or practice that resulted in inaccurately  
9 recording Plaintiffs and Collective members' workhours, causing vast underpayments  
10 for the amount of hours Plaintiffs and Collective members worked. These  
11 underpayments caused Plaintiffs and Collective members to receive wages below the  
12 federal minimum wage. Further, Defendant had a plan, policy or practice of not  
13 recording or paying Plaintiffs and Collective members for interrupted, interruptible, or  
14 missed meal and rest breaks. These unpaid hours are typically worked in excess of 40  
15 hours per week, and therefore the failure to track these hours results in a violation of  
16 the FLSA.

17  
18 81. The similarly situated Collective members are known to Defendant, are  
19 readily identifiable, and may be located through Defendant's records. These similarly  
20 situated employees may readily be notified of this action, and allowed to "opt-in" to this  
21 case pursuant to 29 U.S.C. § 216(b) for the purpose of collectively adjudicating their  
22 claims for unpaid wages, liquidated damages (or, alternatively, interest), and attorneys'  
23 fees and costs under the FLSA.

24 **CLASS ACTION ALLEGATIONS**

25 82. Plaintiffs bring causes of action for violation of California's wage-and-  
26 hour laws as a class action on behalf of all members of the Class and Subclasses which  
27 are defined and composed as follows:  
28

1 **THE CLASS:**

2 All current and former hourly, non-exempt employees employed by  
3 Defendant at one of Defendant's warehouse locations in California including  
4 Treadmill Specialists, Assemblers, Warehouse Associates, Tread  
Operations, Drivers, Warehouse Associates, Master Technicians, Field  
Operations Leads, and other similar positions, at any time starting  
November 18, 2020 until resolution of this action.<sup>1</sup>

5 83. In the alternative, and for the convenience of the Court and the parties,  
6 Plaintiffs may seek to certify the following Subclasses at the time the motion for class  
7 certification is filed:

8 **UNTIMELY PAYMENT OF WAGES SUBCLASS:**

9 84. All members of the Class who Defendant failed to timely pay all wages  
10 earned when due, as defined by Labor Code § 204 for all hours worked during the Class  
11 Period.

12 **OVERTIME SUBCLASS:**

13 85. All members of the Class who (a) worked in excess of 8 hours per day  
14 and/or 40 hours per week; and (2) who Defendant failed to pay wages at the requisite  
15 overtime rates of pay for overtime hours worked during the Class Period.

16 **MEAL PERIOD SUBCLASS:**

17 86. All members of the Class that Defendant did not provide 30-minute,  
18 uninterrupted and duty-free meal periods for shifts over 5 and 10 hours of work, and  
19 who were not paid an additional hour of pay in lieu thereof during the Class Period.

20 **REST PERIOD SUBCLASS:**

21 87. All members of the Class that Defendant did not authorize or permit  
22 uninterrupted and duty-free 10-minute paid rest periods for every four hours worked, or  
23 major fraction thereof, and who were not paid an additional hour of pay in lieu thereof  
24 during the Class Period.

25 ///

26 ///

27 ///

28 <sup>1</sup> The Class and putative class action claims do not include any claims released through the settlement finally approved in *Hernandez Peloton Interactive, Inc.*, Case No. RG20053333 (Alameda Superior Court) on June 2, 2022.

1 **WAGE STATEMENT SUBCLASS:**

2 88. All members of the Class that Defendant did not provide accurate,  
3 itemized wage statements showing all hours actually worked, all wages earned, and the  
4 applicable rates of pay for each hour worked during the Class Period.

5 **WAITING TIME SUBCLASS:**

6 89. All members of the Class who (a) from three years prior to the filing of  
7 this complaint separated from Defendant's employment, and (2) who Defendant  
8 knowingly and willfully failed to pay all wages due within 72 hours of the time such  
9 employees voluntarily or involuntarily ended their employment with Defendant during  
10 the Class Period.

11 **REIMBURSEMENT OF BUSINESS EXPENSES SUBCLASS:**

12 90. All members of the Class that Defendant did not reimburse expenses  
13 necessarily incurred in the discharge of performing their work-related duties during the  
14 Class Period.

15 91. Throughout discovery in this litigation, Plaintiffs may find it appropriate  
16 and/or necessary to amend the definition of the Subclasses. In any event, Plaintiffs will  
17 formally define and designate a class definition at such time when Plaintiffs seek to  
18 certify the Class or Subclasses defined herein.

19 **COMMON CLASS ACTION ALLEGATIONS FOR THE PROPOSED CLASS**  
20 **AND SUBCLASSES**

21 92. **Numerosity**: The potential quantity of members of the Class and  
22 Subclasses as defined are so numerous that joinder of all members would be unfeasible  
23 and impractical. Plaintiffs are informed and believe that the total number of current and  
24 formerly employed members of the Class exceeds 100. The quantity and identity of  
25 such membership is readily ascertainable via inspection of Defendant's records.

26 93. **Superiority**: The nature of this action and the nature of the laws available  
27 to Plaintiffs make the use of the class action format particularly efficient and the  
28

1 appropriate procedure to afford relief to Plaintiffs and the members of the Class and  
2 Subclasses for the wrongs alleged herein, for the following reasons:

- 3 a) The State of California, for which there is a named representative, has a  
4 public policy which encourages the use of the class action device.
- 5 b) By establishing a technique whereby, the claims of many individuals can  
6 be resolved at the same time, the class suit both eliminates the possibility  
7 of repetitious litigation and provides small claimants with a method of  
8 obtaining redress for claims which would otherwise be too small to  
9 warrant individual litigation.
- 10 c) This case involves large corporate Defendant and a large number of  
11 individual class members with many relatively small claims and common  
12 issues of law and fact.
- 13 d) If each individual member of the Class was required to file an individual  
14 lawsuit, the large corporate Defendant would necessarily gain an  
15 unconscionable advantage because Defendant would be able to exploit  
16 and overwhelm the limited resources of each individual member of the  
17 Class with Defendant's vastly superior financial and legal resources.
- 18 e) Requiring each individual member of the Class to pursue an individual  
19 remedy would also discourage the assertion of lawful claims by the  
20 members of the Class who would be disinclined to pursue action against  
21 Defendant because of an appreciable and justifiable fear of retaliation  
22 and permanent damage to their lives, careers and well-being.
- 23 f) Proof of a common policy and practice or factual pattern, of which the  
24 members of the Class experienced, is representative of the Class herein  
25 and will establish the right of each of the members of the Class to recover  
26 on the causes of action alleged herein.
- 27 g) Absent class treatment, the prosecution of separate actions by the  
28 individual members of the Class, even if possible, would likely create:

- i. a substantial risk of each individual plaintiff presenting in separate, duplicative proceedings the same or essentially similar arguments and evidence, including expert testimony;
  - ii. a multiplicity of trials conducted at enormous expense to both the judicial system and the litigants;
  - iii. inconsistent or varying verdicts or adjudications with respect to the individual members of the Class against Defendant;
  - iv. potentially incompatible standards of conduct for Defendant; and
  - v. potentially incompatible legal determinations with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of the other members of the Class who are not parties to the adjudications or which would substantially impair or impede the ability of the members of the Class to protect their interests;
- h) The claims of the individual members of the Class are not sufficiently large to warrant vigorous individual prosecution, considering all of the concomitant costs and expenses attendant thereto;
- i) Courts seeking to preserve efficiency and other benefits of class actions routinely fashion methods to manage any individual questions; and
- j) Judicial precedent urges trial courts, which have an obligation to consider the use of innovative procedural tools to certify a manageable class, to be procedurally innovative in managing class actions.

94. **Well-defined Community of Interest:** Plaintiffs also meet the established standards for class certification as follows:

- a) **Typicality:** The claims of Plaintiffs are typical of the claims of all members of the Class and Subclasses they seek to represent because all members of the Class sustained injuries and damages arising out of Defendant's common course of conduct in violation of California law,



1 and the injuries and damages of all members of the Class were caused by  
2 Defendant's wrongful conduct in violation of California law, as alleged  
3 herein.

4 b) **Adequacy**: Plaintiffs are adequate representatives of the Class and/or  
5 Subclasses they seek to represent, will fairly protect the interests of the  
6 members of the Class, have no interests antagonistic to the members of  
7 the Class, and will vigorously pursue this suit via attorneys who are  
8 competent, skilled, and experienced in litigating matters of this type.

9 c) **Predominant Common Questions of Law or Fact**: There are common  
10 questions of law and/or fact as to the members of the Class which  
11 predominate over questions affecting only individual members of the  
12 Class, including, without limitation:

- 13 i. Whether Defendant failed and continues to fail to have a policy to  
14 provide members of the Class timely, duty-free, uninterrupted  
15 meal periods of at least 30-minutes for shifts over 5 and 10 hours  
16 of work;
- 17 ii. Whether Defendant failed and continues to fail to have a policy to  
18 provide members of the Class timely, duty-free, uninterrupted rest  
19 periods of at least 10-minutes for every four hours worked or major  
20 fraction thereof;
- 21 iii. Whether Defendant unlawfully failed to pay Plaintiffs and the  
22 members of the Class overtime compensation in violation of Labor  
23 Code §§ 218, 510, 1194, and IWC Order No. 4 and No. 9;
- 24 iv. Whether Defendant unlawfully failed to maintain accurate records  
25 in violation of Labor Code § 1174(d);
- 26 v. Whether Defendant unlawfully failed to pay all wages to Plaintiffs  
27 and members of the Class when due in violation of Labor Code §  
28 204;

- vi. Whether Defendant unlawfully failed to furnish accurate itemized statements to members of the Class in violation of Labor Code §§ 226, 226.3;
- vii. Whether Defendant failed to reimburse Plaintiffs and members of the Class for all expenses incurred in discharge of their duties in violation of Labor Code § 2802;
- viii. Whether Defendant's policies and practices of failing to pay their employees all wages due within the time required by California law after their employment ended with Defendant violate Labor Code §§ 201-203;
- ix. Whether the members of the Class are entitled to compensatory damages, and if so, the means of measuring such damages;
- x. Whether the members of the Class are entitled to injunctive relief;
- xi. Whether the members of the Class are entitled to restitution; and
- xii. Whether Defendant is liable for attorneys' fees and costs to the extent permitted by California law.

d) **Manageability of Class and Common Proof:** The nature of this action and the nature of laws available to Plaintiffs make use of the class action format and procedure a particularly efficient and appropriate procedure to afford relief to Plaintiffs and members of the Class for the wrongs alleged herein. Specifically, liability will turn on Defendant's own uniform, systematic practices of failing to pay their employees for all wages they earned in violation of California law during the Class Period. Therefore, the wage violations are predominant questions of fact that are easily capable of being determined through manageable devices of common proof, such as statistical random sampling, survey evidence based on scientific principles, representative testimony, documentary evidence and common practices/procedures of Defendant in treating each

1 of the members of the Class as a homogeneous group. Once the  
2 predominant issues of wage compliance are determined, then each of the  
3 derivative subclass claims and damages suffered by each member of the  
4 Class will be capable of being shown by several means of common proof,  
5 and limited by individual showings of entitlement to recovery that can be  
6 professionally administered and tailored to the facts and circumstances  
7 of the case.

8 **FIRST CAUSE OF ACTION**

9 **THE FAIR LABOR STANDARDS ACT**

10 **In Violation of 29 U.S.C. §§ 201, *et seq.***

11 **(On Behalf of the Collective)**

12 95. Plaintiffs re-allege and incorporate the foregoing paragraphs as though  
13 fully set forth herein.

14 96. The FLSA requires that covered employees receive compensation for all  
15 hours worked and overtime compensation of not less than one and one-half times the  
16 regular rate of pay for all hours worked in excess of forty hours in a workweek. 29  
17 U.S.C. §§ 206(a)(1), 207(a)(1).

18 97. At all times material herein, Plaintiffs and the Collective are covered  
19 employees entitled to the rights, protections, and benefits provided under the FLSA. 29  
20 U.S.C. §§ 203(e) and 207(a).

21 98. Defendant is a covered employer required to comply with the FLSA's  
22 mandates.

23 99. Defendant has violated the FLSA with respect to Plaintiffs and the  
24 Collective, by, inter alia, failing to compensate Plaintiffs and the Collective for all hours  
25 worked and, with respect to such hours, failing to pay the legally mandated overtime  
26 premium for such work and/or minimum wage. Defendant has also violated the FLSA  
27 by failing to keep required, accurate records of all hours worked by Plaintiffs and the  
28 Collective. 29 U.S.C. § 211(c).

1 100. Plaintiffs and the Collective are victims of a uniform and company-wide  
2 compensation policy that has been applied to current and former non-exempt, hourly  
3 employees of Defendant, working throughout the United States.

4 101. Plaintiffs and the Collective are entitled to damages equal to the mandated  
5 pay, including minimum wage, straight time, and overtime premium pay within the  
6 three years preceding the filing of the complaint, plus periods of equitable tolling,  
7 because Defendant has acted willfully and knew or showed reckless disregard for  
8 whether the alleged conduct was prohibited by the FLSA.

9 102. Defendant has acted neither in good faith nor with reasonable grounds to  
10 believe that its actions and omissions were not a violation of the FLSA, and as a result  
11 thereof, Plaintiffs and the Collective are entitled to recover an award of liquidated  
12 damages in an amount equal to the amount of unpaid overtime pay and/or prejudgment  
13 interest at the applicable rate. 29 U.S.C. § 216(b).

14 103. Pay, including minimum wage, straight time, and overtime compensation,  
15 has been unlawfully withheld by Defendant from Plaintiffs and the Collective as a result  
16 of Defendant's violations of the FLSA. Accordingly, Defendant is liable for unpaid  
17 wages, together with an amount equal as liquidated damages, attorneys' fees, and costs  
18 of this action.

19 104. Wherefore, Plaintiffs and the Collective request relief as hereinafter  
20 provided.  
21

22 **SECOND CAUSE OF ACTION**

23 **FAILURE TO PROVIDE MEAL PERIODS**

24 **In Violation of Labor Code §§ 226.7(c), 512(a), 1198,**

25 **IWC Order No. 4-2001 and No. 9-2001**

26 **(On Behalf of the Class)**

27 105. Plaintiffs reallege and incorporate by reference all preceding paragraphs as  
28 though fully set forth herein.

1           106. *Labor Code* § 512 provides in relevant part: “An employer shall not  
2 employ an employee for a work period of more than five hours per day without  
3 providing the employee with a meal period of not less than 30 minutes . . . . An employer  
4 shall not employ an employee for a work period of more than 10 hours per day without  
5 providing the employee with a second meal period of not less than 30 minutes . . . .”

6           107. IWC Order No. 4-2001 and No. 9-2001, which applies to Defendant’s  
7 industry, likewise requires employers to provide meal periods to employees. Section  
8 11(C) of IWC Order No. 4-2001, IWC No. 9-2001 provide in relevant part: “Unless the  
9 employee is relieved of all duty during a 30-minute meal period, the meal period shall  
10 be considered an “on duty” meal period and counted as time worked.” An ‘on duty’  
11 meal period shall be permitted only when the nature of the work prevents an employee  
12 from being relieved of all duty and when by written agreement between the parties, an  
13 on-the-job paid meal period is agreed to. The written agreement shall state that the  
14 employee may in writing, revoke the agreement at any time.

15           108. *Labor Code* §1198 states: “The maximum hours of work and the standard  
16 conditions of labor fixed by the commission shall be the maximum hours of work and  
17 the standard conditions of labor for employees. The employment of any employee for  
18 longer hours than those fixed by the order or under conditions of labor prohibited by  
19 the order is unlawful.”

20           109. *Labor Code* § 226.7(c) provides in relevant part: “If an employer fails to  
21 provide an employee a meal or rest or recovery period in accordance with a state law,  
22 including, but not limited to, an applicable statute or applicable regulation, standard, or  
23 order of the Industrial Welfare Commission, . . . the employer shall pay the employee  
24 one additional hour of pay at the employee’s regular rate of compensation for each  
25 workday that the meal or rest or recovery period is not provided.

26           110. Throughout the Class Period, Plaintiffs and members of the Class are/were  
27 required to assist customers and other employees during their lunch breaks, which  
28 would force them to work during their lunch breaks. This made it impossible for

1 Plaintiffs and members of the Class to have a duty-free uninterrupted meal break.  
2 Defendant did not pay Plaintiffs and members of the Class for the time they worked  
3 during their breaks nor the premium pay to which they are/were entitled for the missed  
4 and non-compliant rest and meal breaks.

5 111. Plaintiffs and members of the Class did not waive their right to timely meal  
6 periods by mutual consent with Defendant or otherwise.

7 112. The nature of Plaintiffs and Class Members' work, providing deliveries  
8 and customer service, was rigorous and nonstop. Plaintiffs and Class Members were  
9 frequently prevented from timely taking meal breaks because, due to their constant work  
10 demands and sensitive timelines.

11 113. Defendant discouraged, impeded and through threats and intimidation  
12 prevented and dissuaded Plaintiffs and members of the Class from taking compliant 30-  
13 minute meal periods, nor did Defendant pay Plaintiffs or Members of the Class with an  
14 additional hour of pay for these meal period violations, nor did Defendant pay Plaintiffs  
15 and Class Members a premium pay penalty for missed, short, late or interrupted meal  
16 breaks pursuant to *Labor Code* § 226.7(c).

17 114. As a result of Defendant's violations of *Labor Code* §§ 226.7(c), 512(a),  
18 1198, IWC Order No. 4-2001 and No. 9-2001, Plaintiffs seek recovery of "premium  
19 pay" pursuant to the DLSE's Policy Manual Guidelines and *Labor Code* § 226.7.

20 115. Further, pursuant to *Labor Code* §218.6 and Civil Code §3287, the  
21 members of the Rest Period Subclass seek recovery of prejudgment interest on all  
22 amounts recovered herein.

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**THIRD CAUSE OF ACTION**

**FAILURE TO PROVIDE REST PERIODS**

**In Violation of Labor Code §§ 226.7(c), 1198,**

**IWC Order No. 4-2001 and No. 9-2001**

**(On Behalf of the Class)**

116. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully set forth herein.

117. Section 12(A) of IWC Order No. 4-2001 and No. 9-2001 provide in relevant part: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. . . . Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.”

118. *Labor Code* §1198 states: “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

119. *Labor Code* § 226.7(c) provides in relevant part: “If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, . . . the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

120. Throughout the Class Period, Defendant fails/failed to provide rest periods to Plaintiffs and Class Members. The nature of Plaintiffs and Class Members’ work required them to provide customer and delivery services based on Defendant’s



1 designated timeline, which is rigorous and nonstop. Plaintiffs and Class Members  
2 are/were frequently prevented from timely taking rest breaks due to constant work  
3 demands, competition and sensitive timelines.

4 121. Defendant knew or reasonably should have known that Plaintiffs and Class  
5 Members were not timely relieved of all duties and were impeded or prevented from  
6 timely taking timely all rest breaks after every fourth hour of work (or major fraction  
7 thereof).

8 122. Plaintiffs and the Class Members were not paid premium pay penalties  
9 pursuant to *Labor Code* § 226.7(c) for any of the workdays that Defendant failed to  
10 provide them timely, uninterrupted rest breaks.

11 123. As a result of Defendant's violations of *Labor Code* §§ 226.7(c), 1198,  
12 IWC Order No. 4-2001 and No. 9-2001, Plaintiffs on their own behalf and on behalf of  
13 the Class Members they seek to represent, seek "premium pay penalties" pursuant to  
14 *Labor Code* § 226.7.

15 124. Further, pursuant to *Labor Code* §218.6 and Civil Code §3287, the  
16 members of the Rest Period Subclass seek recovery of prejudgment interest on all  
17 amounts recovered herein.

18 **FOURTH CAUSE OF ACTION**

19 **FAILURE TO PAY OVERTIME WAGES**

20 **In Violation of Labor Code §§ 510, 1194**

21 **(On Behalf of the Class)**

22 125. Plaintiffs reallege and incorporate by reference all preceding paragraphs as  
23 though fully set forth herein.

24 126. Plaintiffs seek to represent the proposed Class or in the alternative the  
25 proposed Overtime Subclass as a basis to enforce equal or greater protections for wages  
26 owed that are offered by California law. Because the practices alleged herein are  
27 uniform, systematic, and continuous and affect each proposed member of the Class in  
28

1 a legally identical way, Plaintiffs, at the appropriate time will move to certify the Class  
2 or Overtime Subclass to the extent permitted by *Cal. Code Civ. Proc.* § 382.

3 127. Plaintiffs and the Class were at all times subject to California’s laws and  
4 regulations protecting the employees’ entitlement to be paid and presumption to be paid  
5 overtime wages for requisite hours worked beyond a normal workday or a normal work  
6 week, as specified, without limitation, by *Labor Code* §§ 510, 1194, IWC Order No. 4  
7 and No. 9.

8 128. California law requires employers, such as Defendant to pay overtime  
9 compensation to all nonexempt employees for all hours worked over 40 hours per week,  
10 or over 8 hours per day. *Labor Code* § 204 establishes the fundamental right of all  
11 employees in the State of California to be paid wages, including straight time and  
12 overtime, in a timely fashion for their work.

13 129. *Labor Code* § 510(a) states in pertinent part: “Any work in excess of eight  
14 hours in one workday and any work in excess of 40 hours in any one workweek ... shall  
15 be compensated at the rate of no less than one and one-half times the regular rate of pay  
16 for any employee.” In addition, *Labor Code* § 510(a) provides that “[a]ny work in  
17 excess of 12 hours in one day shall be compensated at the rate of no less than twice the  
18 regular rate of pay for an employee.”

19 130. Pursuant to *Labor Code* § 1198 it is unlawful to employ persons for longer  
20 than the hours set by the IWC.

21 131. Pursuant to *Labor Code* § 1194, “...any employee receiving less than the  
22 legal minimum wage or the legal overtime compensation applicable to the employee is  
23 entitled to recover in a civil action the unpaid balance of the full amount of this  
24 minimum wage or overtime compensation, including interest thereon, reasonable  
25 attorney’s fees, and costs of suit.”

26 132. As set forth above, Plaintiffs and the members of the Class were entitled  
27 to be paid overtime compensation for all overtime hours worked. Plaintiffs, and  
28 members of the Class, were regularly and consistently required to work overtime during

1 the Class Period but were not paid for all overtime hours worked and were not paid at  
2 the correct overtime rate of pay.

3 133. Throughout the Class Period, Plaintiffs and members of the Class worked  
4 in excess of 8 hours in a workday and/or 40 hours in a workweek.

5 134. Plaintiffs and Class Members would also routinely work off the clock  
6 during their meal breaks, as were required by Defendant. Due to this time worked off  
7 the clock, Plaintiffs and Class Members would routinely exceed eight-hour shifts and  
8 forty-hour workweeks and would not be paid the required overtime pay.

9 135. During the Class Period, Defendant did not pay Plaintiffs and members of  
10 the Class overtime pay for all of the overtime hours worked, including hours worked  
11 while off the clock and Defendant did not pay Plaintiffs and members of the Class at  
12 the correct overtime rate of pay.

13 136. As a direct and proximate result of Defendant's unlawful conduct as set  
14 forth herein, Plaintiffs and members of the Class have sustained damages, including  
15 loss of earnings for hours of overtime worked on behalf of Defendant in an amount to  
16 be established according to proof at trial, prejudgment interest, and costs and attorneys'  
17 fees, pursuant to *Labor Code* § 1194.2 and applicable California law.

18 **FIFTH CAUSE OF ACTION**

19 **FAILURE TO MAINTAIN ACCURATE RECORDS**

20 **In Violation of Labor Code § 1174(d)**

21 **(On Behalf of the Class)**

22 137. Plaintiffs reallege and incorporate by reference all preceding paragraphs as  
23 though fully set forth herein.

24 138. *California Labor Code* § 1174(d), which was in force and effect at all  
25 relevant times, herein, provides in pertinent part, that "Every person employing labor in  
26 this state shall keep... at a central location in the state or at the plants or establishments  
27 at which employees are employed, payroll records showing the hours worked daily by  
28 and the wages paid to, and the number of piece-rate units earned by and any applicable

1 piece rate paid to, employees employed at the respective plants or establishments. These  
2 records shall be kept in accordance with rules established for this purpose by the  
3 commission, but in any case, shall be kept on file for not less than three years. An  
4 employer shall not prohibit an employee from maintaining a personal record of hours  
5 worked, or, if paid on a piece-rate basis, piece-rate units earned.”

6 139. During the Class Period, Defendant knowingly and intentionally failed to  
7 accurately record, track, maintain, and keep accurate records of each and every hour  
8 worked and wages earned for Plaintiffs and the Class Members.

9 140. Upon information and belief and thereon, Plaintiffs have alleged herein  
10 that in an effort to fabricate the appearance of compliance with the provisions of the  
11 Labor Code, (simultaneously motivated by Defendant’s effort to unlawfully avoid  
12 payment of premium pay penalties owed for missed or non-compliant rest and meal  
13 breaks, and overtime pay). Defendant’s routinely prohibited Plaintiffs and members of  
14 the Class from receiving proper, timely, and compliant meal and rest breaks and altered  
15 timesheets to get rid of any owed overtime pay.

16 141. Thus, at all times relevant, Defendant failed to maintain accurate records  
17 of all hours Plaintiffs and Class Members worked, including hours they were working  
18 during rest and meal break period, and for the days they worked in excess of eight hours,  
19 or workweeks in excess of forty hours. As a result of Defendant’s failure to maintain  
20 proper accurate records, premium penalties to which Plaintiffs and Class Members were  
21 entitled for rest and meal break violations was not properly recorded either.

22 142. Accordingly, Plaintiffs as a direct and proximate result of Defendant’s  
23 unlawful conduct as set forth herein, Plaintiffs and members of the Class have sustained  
24 damages, for Defendant’s violation of *Labor Code* § 1174(d), including loss of earnings  
25 for all hours worked, and loss of receipt of premium pay penalties, in amounts to be  
26 established at time.

27 143. Plaintiffs and Class members are therefore entitled to and do seek to  
28 recover penalties, pursuant to § 1174.5, which provides that an employer who fails to

properly maintain records pursuant to 1174(d) shall be subject to a civil penalty of five hundred dollars (\$500).

**SIXTH CAUSE OF ACTION**

**FAILURE TO PAY ALL WAGES EARNED WHEN DUE**

**In Violation of Labor Code § 204**

**(On Behalf of the Class)**

144. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully set forth herein.

145. The California Labor Code requires employers to pay all wages due within the time specified by law. *California Labor Code* § 204 was in full force and effect at all relevant times herein.

146. Pursuant to § 204, for employees entitled to pay twice per month, two periods of pay are required. Labor performed between the 1st and 15th of the month must be paid between the 16th and 26th of the same month and labor performed on the 16th and the end of the month must be paid on pay days between the 1st and 10th of the following month. *Labor Code* § 210 provides that “ ... (a) In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in §§ 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty as follows:

(1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.

(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

147. Plaintiffs and the Class Members were entitled to be paid twice monthly for labor performed. Although Plaintiffs and the class members are and/or were paid twice monthly, Defendant failed and intentionally refused to pay Plaintiffs and the Class

1 Members all wages they were entitled to, twice monthly, including overtime pay during  
2 each and every pay period of their employment.

3 148. As alleged herein, Plaintiffs and the Class Members were not paid for all  
4 of their wages, for each and every hour worked, including inter alia time worked during  
5 rest and meal breaks, time worked off the clock and overtime hours, as alleged herein,  
6 during every single pay period during the term(s) of their employment.

7 149. Accordingly, as a result of the unlawful acts of Defendant, Plaintiffs and  
8 the Class  
9 Members have been deprived of wages in amounts to be determined according to proof  
10 at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon,  
11 attorneys' fees, and costs of suit, pursuant to *Labor Code* § s 210, 218 and 1194.

12 **SEVENTH CAUSE OF ACTION**

13 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

14 **In Violation of Labor Code § 226(a)**

15 **(On Behalf of the Class)**

16 150. Plaintiffs reallege and incorporate by reference all preceding paragraphs as  
17 though fully set forth herein.

18 151. *Labor Code* § 226(a) requires employers to provide employees itemized  
19 wage statements that accurately report, among other things, the total hours worked, and  
20 total wages earned in each pay period. Section 226(a) states in pertinent part, that  
21 “[e]very employer shall, semimonthly or at the time of each payment of wages, furnish  
22 each of his or her employees, either as a detachable part of the check, draft, or voucher  
23 paying the employee’s wages, or separately when wages are paid by personal check or  
24 cash, an accurate itemized statement in writing showing (1) gross wages earned, (2)  
25 total hours worked by the employee ..., (5) net wages earned, (6) the inclusive dates of  
26 the period for which the employee is paid ..., and (9) all applicable hourly rates in effect  
27 during the pay period and the corresponding number of hours worked at each hourly  
28 rate by the employee ...”

1           152. *Labor Code* § 226(e)(1) provides: “An employee suffering injury as a  
2 result of a knowing and intentional failure by an employer to comply with subdivision  
3 (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the  
4 initial pay period in which a violation occurs and one hundred dollars (\$100) per  
5 employee for each violation in a subsequent pay period, not to exceed an aggregate  
6 penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and  
7 reasonable attorney’s fees.”

8           153. *Labor Code* § 226(h) provides: “An employee may also bring an action for  
9 injunctive relief to ensure compliance with this section, and is entitled to an award of  
10 costs and reasonable attorney’s fees.”

11           154. As alleged supra, during the Class Period, Defendant failed to maintain  
12 accurate records, including records of time worked through rest and meal break periods,  
13 resulting in failure pay them overtime wages they were owed when they worked shifts  
14 in excess of eight hours or in excess of forty hours per week.

15           155. During the Class Period Defendant knowingly and willingly failed to  
16 comply with *Labor Code* § 226. As a common policy and practice Defendant did not  
17 include all hours worked, such as the hours worked during on-duty rest and meal breaks,  
18 overtime hours and premium pay for regularly missed or otherwise, non-compliant, rest  
19 and meal breaks. As such, the wage statements issues to the Plaintiffs and Class  
20 Members were not accurate, did not reflect or include all wages earned during each and  
21 every pay period of the Class Period. Defendant’s knowing, and intentional omissions  
22 caused the Plaintiffs and Class Members to suffer “injury” by, among other things,  
23 impeding them from knowing the amount of wages to which they are/were lawfully  
24 entitled.

25 ///

26 ///



1           156. As a result of Defendant's violations of *Labor Code* § 226(a), Plaintiffs  
2 seek an award of penalties pursuant to *Labor Code* § 226(e)(1), and injunctive relief,  
3 attorneys' fees, and costs pursuant to *Labor Code* § 226(h).

4                               **EIGHTH CAUSE OF ACTION**

5                               **FAILURE TO REIMBURSE WORK EXPENSES**

6                               **In Violation of Labor Code § 2802**

7                               **(On Behalf of the Class)**

8           157. Plaintiffs reallege and incorporate by reference all preceding paragraphs as  
9 though fully set forth herein.

10          158. *Labor Code* § 2802(a) requires employers to reimburse employees for all  
11 expenses they incur in direct consequence of the discharge of their duties or obedience  
12 to their employers' instructions.

13          159. As alleged *supra*, Defendant required Plaintiffs and Class/Subclass  
14 Members to use their personal cell phones, personal cell phone data plans, personal  
15 Internet access, home Internet access and to purchase uniforms to perform their job  
16 duties and for Plaintiffs and Class/Subclass members, it is also essential for them to use  
17 the GPS function on their own personal cell phones via their personal cell phone data  
18 plans.

19          160. Also, Defendant required Plaintiffs and Class/Subclass Members to  
20 download the apps "Deputy," "Okta," "Sales Service Lightning," "Sales Force," "Duo  
21 Mobile," "SAT," "Confirma Pay," "Google Sheets," "Safoya," "Slack" for carrying out  
22 their day-to-day work duties and for authentication purposes to work website, portals,  
23 and work devices during the Class Period.

24          161. Further, during the Class Period, as company vans are/were not available  
25 at all times, Defendant at times required Plaintiffs and Class/Subclass Members to use  
26 their personal vehicles to travel between customers' homes, installation work sites,  
27 and/or work facilities to handle installations and provide customer service.  
28

1           162. During the Class Period, Defendant required Plaintiffs and Class/Subclass  
2 Members to wear black shirts, black pants, and black work boots with no markings to  
3 comply with the company dress code. Defendant informed Plaintiffs and Class/Subclass  
4 Members that they would provide the work outfits but only provided one shirt and  
5 partial reimbursements for the black work boots. Defendant also promised Plaintiffs  
6 and Class/Subclass Members that they will receive reimbursements for the tools and  
7 gears that they purchased for work (i.e. charger for the company van), but the said  
8 reimbursements were never received.

9           163. “All awards made by a court or by the Division of Labor Standards  
10 Enforcement for reimbursement of necessary expenditures under this section shall carry  
11 interest at the same rate as judgments in civil actions. Interest shall accrue from the date  
12 on which the employee incurred the necessary expenditure or loss.” (Cal. Labor Code  
13 § 2802(b).)

14           164. California Labor Code section 2802(c) provides: “For purposes of this  
15 section, the term “necessary expenditures or losses” shall include all reasonable costs,  
16 including, but not limited to, attorney’s fees incurred by the employee enforcing the  
17 rights granted by this section.”

18           165. Defendants owe a duty to Plaintiffs and members of Plaintiff Classes to  
19 indemnify them for all necessary expenditures, losses, and damages suffered and  
20 incurred in direct consequence of the discharge of their duties, or of their obedience to  
21 the directions of Defendants.

22           166. As a result of Defendant’s failure to indemnify and reimburse Plaintiffs  
23 and Class Members for the expenses they necessarily incurred in the performance and  
24 discharge of their work-related duties, Plaintiffs and the Class Members have sustained  
25 economic damages in amount to be proven at trial.

26           167. As a result of Defendant’s violation of Labor Code § 2802, Plaintiffs seek  
27 reimbursement for all business-related expenses they have incurred working for  
28

1 Defendant, in amounts to be determined at trial, with interest thereon as well as  
2 attorney's fees and costs of suit pursuant to Labor Code § 2802(c).

3 **NINTH CAUSE OF ACTION**

4 **FAILURE TO TIMELY PAY WAGES UPON TERMINATION**

5 **In Violation of Labor Code §§ 201-203**

6 **(On Behalf of the Class)**

7 168. Plaintiffs reallege and incorporate by reference all preceding paragraphs as  
8 though fully set forth herein.

9 169. *Labor Code* § 201(a) provides in relevant part: "If an employer discharges  
10 an employee, the wages earned and unpaid at the time of discharge are due and payable  
11 immediately" further "if an employee not having a written contract for a definite period  
12 quits his or her employment, his or her wages shall become due and payable not later  
13 than 72 hours thereafter, unless the employee has given 72 hours previous notice of his  
14 or her intention to quit, in which case the employee is entitled to his or her wages at the  
15 time of quitting."

16 170. Here, Defendant failed to provide all wages earned throughout Plaintiffs  
17 and Class Members employment and further failed to remedy its violations at the time  
18 of separation from Defendants. As such Plaintiffs and Class Members did not receive  
19 all wages earned.

20 171. *Labor Code* § 203(a) provides in relevant part: "If an employer willfully  
21 fails to pay, without abatement or reduction, in accordance with § § 201 . . . 202 . . . any  
22 wages of an employee who is discharged or who quits, the wages of the employee shall  
23 continue as a penalty from the due date thereof at the same rate until paid or until an  
24 action therefor is commenced; but the wages shall not continue for more than 30 days."

25 172. Further, *Labor Code* § 218.5(a) states in relevant part: "In any action  
26 brought for the nonpayment of wages . . . the court shall award reasonable attorney's  
27 fees and costs to the prevailing party if any party to the action requests attorney's fees  
28 and costs upon the initiation of the action."

173. As a result of Defendant's violations of Labor Code §§ 201 and 202, Plaintiffs seek an award of "waiting time penalties" pursuant to Labor Code § 203, and attorney's fees and costs pursuant to *Labor Code* § 218.5.

**PRAYER FOR RELIEF**

**WHEREFORE, PLAINTIFFS PRAY FOR RELIEF AND JUDGMENT AGAINST DEFENDANT, AS FOLLOWS:**

**ON THE FIRST THROUGH NINTH CAUSES OF ACTION**

1. For an order certifying that the First Cause of Action in this Complaint may be maintained as a collective action pursuant to 29 U.S.C. -§ 216(b) and that prompt notice of this action be issued to potential members of the Collective, apprising them of the pendency of this action, and permitting them to assert their FLSA claims;
2. For an order equitably tolling the statute of limitations for the potential members of the Collective;
3. Damages and restitution according to proof at trial for all unpaid gratuities, wages and other injuries, as provided by the FLSA, California Labor Code, and California Business and Professions Code;
4. For an order certifying the Second through Ninth causes of action and maintaining said causes of action as a class action on behalf of the members of the Class and/or Subclasses who were either employed or who performed work here in the State of California within the Class Period and that notice of the pendency of this action be provided to members of the Class;
5. Designation of Plaintiffs as the Class Representatives for the Class and/or Subclasses and Plaintiffs' attorneys as Class Counsel for the Class and/or Subclasses;
6. For an award of unpaid wages for all labor performed and liquidated damages in an amount equal to the amount unlawfully unpaid pursuant to the FLSA, California Labor Code §§ 200, 218, 1194 and 1194.2;

7. For an award of unpaid overtime wages pursuant to FLSA, Cal. Labor Code §§ 510 and 1194;
8. All appropriate FLSA and California statutory penalties;
9. An award of unpaid reporting time pay pursuant to IWC Order No. 4 and No. 9;
10. Compensation at the rate of one hour of regular pay for each instance in which a member of the Class was not provided a first or second meal period;
11. Compensation at the rate of one hour of regular pay for each instance in which a member of the Class worked through a rest break or was not provided a proper rest break for every four hours worked or major fraction thereof;
12. Labor Code § 203 penalties;
13. Damages and penalties pursuant to Labor Code §§ 226(a) and 226.3 and 210;
14. Reimbursement of the necessary expenses incurred by the Class in the discharge of their duties;
15. Pre-judgment and post-judgment interest, as provided by law;
16. Attorneys' fees and costs of suit, including expert fees and fees pursuant to the FLSA, California Labor Code §§ 218.5, 226, 1194, Code of Civil Procedure § 1021.5, and other applicable California laws; and
17. For such other and further relief as this Court deems just and proper.

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**DEMAND FOR JURY TRIAL**

PLAINTIFFS hereby demands trial of all issues by jury.

Date: December 6, 2022

/s/ Carolyn H. Cottrell

Carolyn H. Cottrell

Samantha A. Smith

SCHNEIDER WALLACE

COTTRELL KONECKY LLP

*Attorneys for Plaintiffs, on behalf of the  
putative Class and Collective*